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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

clearly unwarranted
at personal privacy

File: EAC-00-190-52451 Office: Vermont Service Center

Date:

JAN 03 2002

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

IN BEHALF OF PETITIONER:

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is described as a religious organization. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), in order to employ him as a "religious educator and prayer leader" at a salary of \$20,500 per year.

The director denied the petition on the grounds that the petitioner failed to establish that it was a qualifying tax exempt religious organization, failed to establish that the proposed position constituted a qualifying religious occupation for the purpose of special immigrant classification, and failed to establish that the beneficiary had had two years of continuous experience in a religious occupation.

On appeal, counsel for the petitioner submitted a written brief and additional documentation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner in this matter is a not-for-profit corporation established in the State of New York on June 10, 1994. The petitioner stated that it operates a mosque. The petitioner declared two full-time employees. It did not provide an estimate of the size of its membership.

The beneficiary is described as a native and citizen of Yemen who was last admitted to the United States on June 27, 1992, as a B-2 visitor. The record reflects that he remained beyond his authorized stay and has resided in the United States since such time in an unlawful status. The petitioner did not respond to the question on the petition form requiring the disclosure of any unauthorized employment in the United States.

It must first be noted that the petitioner did not provide all required information on the petition form. Absent all required information, the petition cannot be properly adjudicated. The petition may be denied as incomplete solely on this basis. See 8 C.F.R. 103.2(a)(1).

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

A petitioner must establish that it is a qualifying religious organization as defined in this type of visa petition proceeding.

8 C.F.R. 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

On appeal, counsel for the petitioner submitted a letter from the Internal Revenue Service (IRS) dated November 12, 1992 reflecting that Islamic Brotherhood, Inc. was granted the appropriate tax exempt status under section 501(c)(3) of the Internal Revenue Code. The petitioner had previously claimed that it is "also known as"

Islamic Brotherhood, Inc.

On review, it must be concluded that the petitioner has failed to overcome the director's objection. There is no evidence that the petitioner, Masjid Al-Farouq Islamic Services, Inc., is a successor to or is affiliated with Islamic Brotherhood, Inc. The petitioner was established after the issue date of the IRS letter. The petitioner is a duly authorized New York corporation. The record does not establish that the petitioner has tax exempt recognition from the IRS in its own right or based on the claimed affiliation with Islamic Brotherhood, Inc.

The next issue is whether the petitioner has established that the proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

8 C.F.R. 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

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(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not

limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

On appeal, counsel asserted that the duties of the proposed position were acting as a prayer leader for worship services at the petitioner's mosque and as a religious educator in a full-time capacity.

The regulation defining a qualifying religious occupation is worded in a broad manner. This is to accommodate the range of religious occupations in various religious traditions. While many denominations have a tradition of lay prayer leaders and catechists, the Service must look beyond the title of a position. The Service must look at the duties of the position, the sufficiency of evidence submitted, and the credibility of the claim.

After a careful review of the record, it must be concluded that the petitioner has failed to overcome the director's objection. It is common that religious congregations of average size utilize lay workers to assist the clergy and teach children's religion classes. These positions are usually filled on a part-time basis by volunteers who receive some basic instruction in teaching such classes. At issue in this proceeding is whether the proposed position is traditionally a full-time salaried occupation requiring specific religious training in the petitioning organization and/or in its parent religious denomination and thereby is a qualifying religious occupation for the purposes of this proceeding.

In this case, the petitioner has conceded that it has never employed a lay religious worker in its past. It was claimed that the new position was due to its growing congregation. However, the petitioner failed to provide any description of the size of its congregation or the necessity to employ lay persons full-time to meet the needs of its congregation. Absent a description of the size of the congregation, the nature of the services offered, and the number of members utilizing these services, the Service cannot reasonably conclude that the proposed position is credible as a full-time permanent position.

In addition, the petitioner failed to provide any description of its recruitment process resulting in the job offer to the alien beneficiary. There is no indication that the position was advertised or that other candidates were considered. Any non-profit organization establishing a new permanent salaried staff position normally follows some formal search process approved by its board of directors and it considers multiple candidates. A single official of an individual mosque is not usually authorized to offer permanent employment to an individual without a formal process and authorization from the governing structure of the organization. Absent a description of the process whereby the petitioner created the new position and offered the position to the beneficiary, there is a question as to the credibility of the job offer.

Finally, the petitioner has not provided any documentation from an authorized official of the denomination that such lay positions are traditionally permanent salaried positions requiring some specific religious training. The petitioner submitted documentation about the traditions of its faith and the Five Pillars of Islam. However, the petitioner failed to submit any documentation about a tradition of employing lay religious leaders. Merely going on record without supporting documentary evidence, is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner also must establish that the beneficiary had had the

requisite two years of continuous experience in a religious occupation.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on June 2, 2000. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least June 2, 1998.

On appeal, counsel for the petitioner stated that the beneficiary had been a full-time worker since May 1998 who was compensated with "room and board." The petitioner stated that it began to pay the beneficiary a modest monetary salary in January 1999. The petitioner submitted, in part, a photocopy of a 1999 W-2 Form for the beneficiary indicating total wages of \$4,800 from the petitioner.

On review, it must be concluded that voluntary or informal employment with compensation in the form of "room and board" is insufficient to satisfy the requirement of "continuously carrying on" a religious occupation. The plain meaning of the term "occupation" is an individual's primary endeavor and means of financial support. Clearly, informal employment by the petitioner, while also engaging in a secular occupation, does not constitute engaging in a religious occupation as contemplated by the statute. Moreover, there is no evidence to support such a claim, other than the petitioner's own testimony.

Furthermore, the petitioner provided no indication of the beneficiary's actual occupation or means of financial support in this country. Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating documentation such as tax documents, the Service is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.

A petitioner also must demonstrate its ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part, that:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United

States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner in this matter submitted a copy of a budget statement. These documents do not satisfy the regulatory requirement. The petitioner has not furnished the organization's annual reports, federal tax returns, or audited financial statements. Therefore, the petitioner has not satisfied the documentary requirement of this provision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.